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REPORT No. 65/21
PETITION 354-12
REPORT ON ADMISSIBILITY

EVGENY KONSTANTINOVICH OTTO
COSTA RICA

Approved electronically by the Commission on March 31, 2021.

Cite as: IACHR, Report No. 65/21, Petition 354-12. Admissibility. Evgeny Konstantinovich Otto.
Costa Rica. March 31, 2021.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Irina Otto, Tatiana Otto
Alleged victim:	Evgeny Konstantinovich Otto
Respondent State:	Costa Rica
Rights invoked:	Articles 7 (personal liberty), 8 (fair trial) and 22 (freedom of movement and residence) of the American Convention on Human Rights ¹

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	March 6, 2012
Additional information received at the stage of initial review:	April 8, 2012, April 9, 2012, October 10, 2012, October 14, 2012, October 27, 2012, November 19, 2012 and December 13, 2012
Notification of the petition to the State:	October 7, 2016
State's first response:	February 15, 2017
Additional observations from the petitioner:	September 22, 2017, May 17, 2019, October 7, 2019 and August 7, 2020
Additional observations from the State:	September 15, 2018, February 4, 2019, May 6, 2020 and October 20, 2020

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (instrument of ratification deposited on April 8, 1970)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles 7 (personal liberty), 8 (fair trial), 22 (freedom of movement and residence) and 25 (judicial protection) of the American Convention, in relation to its article 1.1 (obligation to respect rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in the terms of Section VI
Timeliness of the petition:	Yes, in the terms of Section VI

¹ Hereinafter "the American Convention".² The observations submitted by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. The petitioner resorts to the IACHR requesting that the State of Costa Rica be declared internationally responsible for the violation of the human rights of Mr. Evgeny Konstantinovich Otto, a citizen of the Russian Federation, based on (i) the procedure of evaluation and dismissal of his request of political refuge in Costa Rica, (ii) the extradition proceedings developed against him, and (iii) the conditions in which he was detained at a prison in Costa Rica and the damages sustained on his bodily and psychological integrity while he was imprisoned therein. Mr. Evgeny Otto was criminally prosecuted and internationally required by the Russian authorities for the crime of fraud, at the same time that he has constantly declared himself to be a victim of political persecution, grounds on which he requested political asylum and refuge in Costa Rica, which was denied. After the initiation and development of the multiple, simultaneous and successive judicial and administrative Costa Rican proceedings described in the following paragraphs, Mr. Otto was effectively extradited to the Russian Federation on September 2, 2015, with the case receiving significant coverage by the media and generating public statements by different Costa Rican State officials, including the President of the Republic at the time, Laura Chinchilla.

Summary of the initial petition and additional information provided by the petitioner

Request for refuge, evaluation and dismissal thereof, and subsequent judicial proceedings

2. In relation to the alleged political persecution, Mr. Otto explains that the origin of the criminal prosecutions against him in the Russian Federation allegedly was a commercial affair, which however took a political tone and a persecutory connotation when he denounced the corruption of State officials whom, he holds, intended to gain access to a textile company he owned. He indicates that the judicial actions in Russia were not initiated by a prosecutor, but by a deputy of Parliament (Duma); and he reports that he has continued to denounce corrupt Russian officials through the Internet, but that the Russian Federation allegedly shut down the corresponding websites and took the articles down from the web. He also claims that Russian authorities have branded him as “extremist” and “dangerous”; and that the “Young Guards” group of the “United Russia” party included him in a public list of “Enemies of Russia”, which entails a serious risk for his life and personal integrity in such country.

3. In 2005 Mr. Otto legally departed Russian territory and legally entered Costa Rica, where he requested refuge on January 11, 2006 before the General Directorate of Migration and Foreign Nationals, under Law No. 7033, arguing political and economic persecution by different public and private persons of the region of Vladimir, in Russia. His request was initially rejected. After the entry into force of the new Migration and Foreign Nationals Act on January 30, 2008 he filed a new request for refuge. However, on November 18, 2008 his request was dismissed for a second time. On May 14, 2009 Mr. Otto filed a contentious-administrative action against these negative administrative decisions, which was ruled in his favor on July 8, 2009 by the Contentious Administrative Tribunal (judgment No. 1354-2009), which ordered that the resolutions which rejected his requests for refuge be voided, and decided that “*the competent authorities of the General Directorate of Migration (...) are to analyze and assess the evidentiary elements provided and offered by the petitioner*”. The Office of the Attorney General of the Republic filed a *cassation* appeal against this judgment before the First Chamber of the Supreme Court of Justice, which dismissed it by means of a judgment of June 9, 2010; upon which the Administration had three months to resolve the refuge request. After complying with this order, on February 22, 2011 the Restricted Visas and Refuge Commission of the General Directorate of Migration again rejected the request for refuge; the decision was challenged by Mr. Otto on April 26, 2011, by means of a motion for revocation and in subsidy for appeal. In this motion, Mr. Otto claimed, *inter alia*, a lack of motivation of the decision and inadequate application of the relevant legal provisions; he also pointed out that the “Young Guards” group, affiliated to the United Russia Party of president Vladimir Putin, had published on the Internet a list of “enemies of Russia” which included his name and location in San José of Costa Rica, which in his view generated a risk for his life and personal integrity; and he concluded that “*there is abundant and more than enough documentary evidence [that] my fundamental rights to personal liberty, physical integrity and even my life are subject to risk*”. The motion was dismissed by a resolution of May 20, 2011 of the Commission of Visas and Refuge, and this negative resolution was confirmed on August 31, 2011 by the Administrative Migratory Tribunal; the latter considered that there was insufficient evidence to consider Mr. Otto as a political refugee,

arguing: “it is not proven in the refuge casefile, that Mr. Evgeny suffered personal persecution by his country’s authorities, insofar as what he provides as evidence, are references to persecution suffered by other Russian nationals, whose link or connection to Mr. Otto is not proven, that is to say, it is not considered to have been proven that those apparent persecutions were borne by his partners, friends, neighbors or relatives”. The Tribunal also ruled on the Internet publications mentioned by the petitioner, holding that “it is not undisputedly corroborated, that these are official websites of that country, nor that the alleged phone tapping and email blockings were actually carried out by the Russian Government”.

4. Against these decisions Mr. Otto filed a new motion before the Contentious Administrative Tribunal on November 14, 2011, requesting their annulment and claiming lack of motivation, inadequate application of the international legal provisions in force, and incorrect evaluation of evidence. On November 28, 2014 the Fourth Section of the Contentious Administrative Tribunal of the Second Judicial Circuit of San José declared Mr. Otto’s claim inadmissible. On January 6, 2015 he filed a *cassation* remedy against this judgment before the First Chamber of the Supreme Court of Justice; which by means of judgment of June 18, 2015 declared the remedy inadmissible, basing itself mainly on the existence, as of that date, of a final extradition judgment in force, which would preclude granting the request for asylum. On July 2, 2015 Mr. Otto’s attorney filed a request for addition and clarification of the *cassation* judgment, which was rejected by the Chamber through a judgment on July 9, 2015. On that same July 2, 2015 the attorney had also filed a request for annulment of the *cassation* judgment, which was denied by the Supreme Court in a ruling of July 16, 2015 where it declared it inadmissible. Upon dismissal of the *cassation* remedy by the Supreme Court of Justice, on August 31, 2015 Mr. Otto’s attorney filed a motion for review before the First Chamber against the *cassation* judgment issued by such Chamber, questioning the impartiality of some of the judges thereof; this remedy had not yet been decided at the time of Mr. Otto’s extradition on September 2, 2015.

5. Mr. Otto has filed criminal complaints against the Minister of Public Security and Government of Costa Rica, Mario Zamora, for the crimes of slander and defamation, on account of statements made by that official when he was the Director-General of Migration, about the alleged responsibility of Mr. Otto for the crimes of which he was being accused in Russia. Such statements were made by means of a note sent by Mr. Zamora to the Contentious Administrative Court, explaining the reasons for which he opposed granting Mr. Otto the status of refugee. In this sense, Mr. Otto claims in the initial petition that he is a victim of persecution by said Minister, “who tried to extradite me twice, for no reason (in November 2008 and May 2009) and who seeks to avoid criminal proceedings he has with me for slander and defamation (Casefile 09-0000028-0162-PE dispatch 0162) at the Criminal Court of the II Judicial Circuit of San José”. In more general terms he also claims that “in Costa Rica, on account of having a pending lawsuit against the current Minister of Security Mr. Mario Zamora Cordero, when he served as Director of the Directorate of Migration and Foreign Nationals, I am not receiving a fair treatment nor is due process being followed with me”.

Request for extradition, judicial extradition proceedings in Costa Rica, and extradition of Mr. Otto

6. In the Russian Federation, on February 14, 2005 Mr. Evgeny Otto was accused by the criminal authorities of the crime of fraud; and on July 11, 2005 the competent Russian judge issued an arrest warrant and international search order against him. Mr. Otto was accused by authorities of the Russian Federation of “stealing capital from the ‘OAO Melenowsky’ company and creating, for the purpose of legalizing such funds, an allegedly fictitious company”, among other actions. For these facts he was indicted with the crime regulated in Article 159 of the Russian Criminal Code, and Costa Rica was asked to apprehend him. In January 2010 the Costa Rican Foreign Minister received diplomatic communication No. 35/3-46-06 of December 21, 2009, from the Deputy General Prosecutor of the Russian Federation, requesting Mr. Otto’s extradition.

7. In Costa Rica, Mr. Otto was detained on May 7, 2010, and set free on May 14, 2010 by decision of the IV Chamber of the Supreme Court after deciding a *habeas corpus* remedy filed by him, on account of his then-pending request for political refuge.

8. On August 24, 2010, the Criminal Court of Pavas decided to suspend the processing of the request for extradition, while said refuge request filed by Mr. Otto since January 30, 2008 was decided. Mr. Otto holds that when he was notified of the decision of the Administrative Migratory Tribunal of August 31, 2011,

which confirmed the denial of his request for refuge, he presented himself to the Criminal Court of Pavas informing it about his location, for which reason said Court issued a precautionary measure instructing him to report on a weekly basis to sign at the Court, starting on November 4, 2011.

9. On March 25, 2011 a judicial extradition procedure was initiated against Mr. Otto in Costa Rica before the Court of the I Criminal Circuit of San José for the crime of fraud, *“for having appropriated another person’s property, or acquisition of a right over another’s property through deceit or abuse of trust”*. Mr. Otto has claimed before the IACHR that this decision was based on false documents, and with grave flaws in their translation into Spanish; he also argued before the judge that the casefile of criminal case No. 74 which was allegedly being conducted against him in Russia had been made up by corrupt politicians and did not exist within the Russian Federation’s official records. In connection to this, he held that the request for extradition had been based on false documents which did not exist in the official records of the Russian Federation, and that they had been accompanied by a *“false authentication at the Embassy of Costa Rica in Moscow”*. In the words of Mr. Otto, in a communication to the Commission, *“on 03.25.2010, the Judge of the Court of the I Criminal Circuit of San José, Lic. Marco Mairena Navarro arbitrarily processed and opened the extradition proceedings (Casefile 10-0030-016-PE), violating [...] Extradition Law number 5991 of 11.09.76; using those false documents, which were not authenticated, had no name, no date and no signatures”*.

10. On November 11, 2011 the Judge of Pavas issued an extradition judgment, declaring the extradition requested by the Russian Federation granted, and ordered the immediate arrest and detention of Mr. Otto. On that same day Mr. Otto had presented himself at the Criminal Court of Pavas to comply with the precautionary measure of weekly reporting and signature, and hours later he was detained at his home. In relation to this judgment, the petitioner claims before the IACHR that in it *“[they] attribute alleged crimes to me, in spite of their absurd reasons, such as: taking over a property which was mine; having no proof whatsoever on the perpetration of such crimes, knowing that I was enduring political persecution by the Russian Federation for which reason I was seeking political refuge”* – reason for which he considers that Article 3(g) of the Extradition Law, according to which extradition shall not be granted for political or related crimes, was violated. He also claims that in the initial petition that *“Chief Prosecutor Mr. José Enrique Castro Marín in the letter dated 13.12.2011 groundlessly invented a new accusation: that Mr. Evgeny was the head of an alleged commercial corporation disguised as an organization... which was actually destined to obtain monetary funds from third parties through fictional transactions, criminal acts [...] and [...] also, with no proof, held that I had participated in an activity between the years 1999 and 2002 [...] and a continuous crime until the year 2012”*.

11. Mr. Otto claims before the IACHR that he had indeed raised the situation of possible risk of torture and violations of due process in Russia before the first instance extradition judge in Costa Rica. As stated in the initial petition before the IACHR, the judges of the case were indeed aware of the fact that *“in the Russian Federation Human Rights are not respected; in the Russian Federation political murders and disappearances are committed; in the Russian Federation there is a significant record of deaths in prisons and torture is practiced”*. That is why, he asserts in the petition that *“should this illegal extradition to Russia take place, illegal treatment awaits me, beyond any justice, with tortures and possible disappearance as the only option to eliminate me as a witness; as it has happened in the case of Sergei Magnitsky”*. Regarding this point, the IACHR notes that in the first instance extradition judgment there is an explicit reference to the guarantees provided by the Russian Federation’s government to the Costa Rican government through its embassy in San José, in the sense that Mr. Otto’s procedural rights were to be respected and he would not be the victim of torture; in the words of the judgment: *“The penalty to be imposed upon the defendant, should he be found guilty, according to the norms of the requesting State, may reach, according to its criterion, around ten years of imprisonment, from which it is understood and this concerning the punishment, that he shall not be submitted to any penalty which affects his bodily integrity, or to inhumane or degrading treatment, an aspect regarding which, the diplomatic representation of the Russian Federation in our country, in any case, granted the corresponding guarantee”*. This Costa Rican first instance extradition judgment continues indicating that the Russian authorities assured that said country *“guarantees that in accordance with the rules of International Law [...] citizen Otto E.K. shall be granted every possibility of defense, including the assistance of lawyers; he shall not be subjected to torture nor to inhuman or degrading treatment. [Neither] is the death penalty foreseen for the crime attributed to Otto E.K. [...]. The General Prosecutor’s Office of the Russian Federation guarantees that Otto E.K. shall be put on trial exclusively*

for the crime for which his extradition is requested, and upon conclusion of the criminal prosecution or the judicial investigation [...] he may leave the country. [...]"

12. On November 16, 2011 Mr. Otto filed an appeal against the judgment which authorized his extradition, claiming inter alia the inexistence of evidence, the need to reject the request for extradition due to the existence of a request of political refuge that was pending resolution, the operation of the statute of limitations over the alleged crime, the incompatibility between the alleged behavior and the criminal description of fraud, and the fact that -as it could be inferred from the filing of the claim in Russia by members of the Duma- *"Mr. Otto is being persecuted for political reasons, and contrary to what Russian authorities say, his security and personal integrity cannot be guaranteed in the Russian Federation"*. In said appeal remedy he also expressly claimed that *"the modality of dispossession of companies has been a constant practice in Russia, by means of very similar procedures to the one suffered in my case"*; and that given his Internet denunciations of such modality of corruption, the Russian authorities intensified the persecution against him through cyber-attacks. In this sense he also claimed in the appeal that *"the modality of extradition has represented one of the means most frequently used by Russia to bring to its territory those persons who have dared to report the corrupt dispossession practices"*. Also, that the criminal complaint filed against him had been brought forth by members of the Russian Parliament, and that *"this is a clear element of proof that Mr. Otto is being persecuted for political reasons and that, contrary to what the Russian authorities state, his security and personal integrity cannot be guaranteed in the Russian Federation"*. On April 10, 2012, the Court of Appeals of Criminal Judgments of the Second Circuit of San José dismissed the appeal. The last allegation of Mr. Otto, just transcribed, was not examined by the appeals court, which considered it was beyond its jurisdiction; the Court asserted that said claim would not be analyzed either as an appeal or as a motion, because it was not a matter for which the legislation had designated such judicial Chamber as a competent judge: *"As for the arguments invoked by Mr. Otto's co-counsel, [...] they shall not be analyzed as an appeal, nor as a motion, since the only arguments which are within the competence of this Chamber are constituted by the reasons duly exposed by attorney Soto Viquez"*.

13. On January 10, 2013 Mr. Otto argued before the Criminal Court of Judgment of the III Judicial Circuit of San José the defense of application of the statute of limitations to the crime, based on an amendment of Russian criminal legislation. This defense was rejected by the Court on January 23, 2013. On January 28, 2013 he filed an appeal. -There is no information in the casefile on the resolution of this appeal-

14. On March 27, 2015 Mr. Otto filed before the Criminal Court of the III Judicial Circuit of San José a "motion for failure to implement a judgment", claiming several legal reasons for which he considered that the extradition judgment had to be voided and he had to be liberated, including the fact that there was a pending *cassation* remedy against the judgment of the Contentious Administrative Court of November 2014 which denied Mr. Otto's claims, which would legally preclude enforcing the extradition. By means of a decision of April 14, 2015, the Criminal Court of the III Judicial Circuit of San José denied this remedy, in considering that *"in accordance with the extradition regulations and criminal procedural legislation applicable in Costa Rica, there does not exist any so-called 'motion for failure to implement a judgment'"*. Even as it rejected Mr. Otto's different allegations, the Court highlighted the firmness of extradition judgments, and the fact that the delay in the procedure was due to the multiple remedies, motions and claims filed by Mr. Otto.

15. After the dismissal of the above-referred *cassation* remedy by the Supreme Court of Justice, on August 31, 2015 Mr. Otto's attorneys filed a motion for review before the First Chamber against the *cassation* judgment issued by such Chamber, based on the fact that one justice had participated in three different judgments related to the same administrative casefile, allegedly affecting the principles of transparency and impartiality of the judge because there had been no opportunity to recuse him. Mr. Otto's extradition materialized days later, despite the fact that, according to his attorneys, with the filing of the motion for review he had once again acquired the status of refuge claimant and could not be extradited. They inform the IACHR that although the Criminal Court of Pavas was warned of the existence of the motion for review, by means of a note prior to the enforcement of the extradition. the first instance judge issued *"one first resolution indicating a light answer, which was then replicated, and which he ended up deciding through a second, sudden judgment holding that the legitimacy of the extradition judgment had already been reviewed by different judicial authorities"*. A copy of this judgment was attached, in which the Criminal Court of the Third Circuit of San José - Southwest office, Pavas, argued: *"Having seen the brief provided by attorney Marco Badilla Chavarría as private*

counsel for extraditable Eugeny Konstantinovich Otto (*sic*), it is decided that: From what is exposed in the aforesaid brief it is understood that the motion filed by attorney Badilla before the First Chamber of the Supreme Court of Justice concerns an administrative casefile processed by the General Directorate of Migration and Foreign Nationals, which has no connection to the extradition proceedings decided by this Court. For this reason, it is hereby ordered to add the submitted writ to his record, with no further additional instructions. Let it be notified". Upon a reiteration of the request by Mr. Otto's lawyer, the same Court reiterated that the extradition was not going to be suspended because the matter had already been reviewed and decided by different courts of the country and the extradition judgment was final.

16. Mr. Otto claims that throughout the extradition proceedings conducted against him in Costa Rica his judicial guarantees and due process were breached; *inter alia*, because the request for extradition issued by the Russian Federation was allegedly based on false documents that were incorrectly translated; because Costa Rican judges were not impartial in their decisions; and because his repeated allegations on the possible risk for his life and personal integrity in Russian territory were not heard.

17. In more general terms, Mr. Otto asserts before the IACHR that in Russia human rights are not respected, since in that country "*many deaths take place in prisons and torture is practiced*", and "*political assassinations and disappearances are committed*". In his view, "*should this illegal extradition to Russia materialize, I am headed towards illegal treatment, beyond any justice, with tortures and possible disappearance as the only option to eliminate me as a witness*". Mr. Otto cites some examples of disappearances, detentions and tortures of high political profile in that country, including the case of businessman Sergei Magnitsky, who died under suspicious circumstances after being arrested.

18. On his first additional observations the petitioner specifies in greater detail his objections to the evidentiary support of the extradition judgments against Mr. Otto, and their incidence upon the rights protected in the American Convention. He explains that the object of the judicial extradition procedure is to guarantee respect for human rights in the course of such international proceedings, and that one of the requirements set forth by Costa Rican law in order to preserve the aforesaid fundamental guarantees, is for there to exist at least indirect evidence of the commission of the crime attributed to the person, which has been required by Costa Rican constitutional jurisprudence itself. In this regard, the petitioner argues that in the case of Mr. Otto, "*the request for extradition included no evidence whatsoever*"; and that a judgment was handed down based exclusively on the description of the facts submitted in the initial request, with no evidentiary support, of an extra-official nature and with translation flaws. The petitioner specifies that "*in the above-mentioned judgment there is no analysis of the culpability or lack thereof of Mr. Otto, as the Costa Rican State so assures in its response, which is what this petition denounces, but refers to non-compliance with the minimal guarantees for the protection of the human rights of the extraditable person*". The petitioner also argues that this claim was raised before the different judges who heard the extradition proceedings, and it was rejected; in spite of which, "*the negative outcome of the remedies filed within the proceedings against Mr. Otto is in contrast with the Constitutional Chamber's decisions in other cases. [...] in 2015, while Mr. Otto was still imprisoned under preventive detention, the Constitutional Chamber used the same arguments raised by us in order to release a Venezuelan fugitive who had been summoned by the Venezuelan justice for fraud*". Different sections of the cited judgment on the extradition proceedings to Venezuela are then cited.

19. As for the evaluation of the risk for Mr. Otto's integrity in the Russian Federation, the petitioner questions that the State, and specifically the judges, simply accepted the diplomatic guarantees provided by the government of that country, without entering into an assessment of the real situation that exists there; and insists that "*several different remedies were filed before administrative and judicial authorities pointing out the concern over the security and respect for the human rights of Mr. Otto, should the extradition become effective, without achieving the slightest analysis that was required*".

20. The petitioner raises, in his additional observations, the violation of the judicial guarantee of impartiality of the judge in this case, because some of the justices who ruled on the contentious-administrative proceedings of request for refuge had already issued previous decisions on the same case and in the same administrative casefile, a claim which was raised domestically and dismissed by the judges, as mentioned

above; which motivated the motion for review filed on August 31, 2015, days before the extradition of the alleged victim.

21. The State, by means of additional observations of February 4, 2019, reports that it *motu proprio* requested information from the Russian Federation on the current situation of Mr. Otto, and that the Russian government responded informing: that by means of judgment dated March 14, 2016 Mr. Otto had been criminally sentenced to 4 years and 6 months in a correctional colony of the ordinary regime; that the time he was deprived of liberty in Costa Rica would be deducted from the time he was to serve in Russia; and, that consequently, on April 29, 2016 Mr. Otto had been set free “*after serving his time in preventive detention No. 1 of the Prisons Service of the Russian Federation in the Province of Vladimir*”, thereafter moving to his place of residence in Moscow.

Habeas corpus remedies filed by Mr. Otto and in his favor, decided by the Costa Rican judges.

22. Mr. Otto was deprived of liberty on May 7, 2010; afterward, on May 14, 2010 he was set free by a judgment of the IV Chamber of the Supreme Court, given that he was requesting political refuge and his petition was pending. By means of a first-instance extradition judgment of November 11, 2011 his detention was formalized, which was implemented on that date.

23. After this second detention, Mr. Otto initially filed four habeas corpus remedies while his extradition proceedings were being conducted.

24. The first remedy was filed on November 14, 2011; Mr. Otto claimed that his refuge-request procedure had not yet been finalized, since his second appeal before the Contentious Administrative Court was still pending, and he reported that “*my claimed and founded fear of persecution, where my liberty and life are threatened, on account of having made serious denunciations concerning authorities and security bodies of the Russian State (...)*” was at stake. The remedy was dismissed in a judgment of November 29, 2011 by the Constitutional Chamber of the Supreme Court of Justice, which decided: “*This Chamber, when deciding on extradition proceedings, has established that this Court is not another instance within the extradition proceedings nor is it called upon to replace the judicial authorities in the exercise of the competence inherent to them, lest it usurp attributions belonging exclusively to another jurisdiction*”. The Constitutional Chamber also considered that “*the admissibility or not of the extradition and the conditions for its granting are to be discussed through ordinary channels. In addition to the above, the applicant provides no element or evidence which may lead to presume the possible violation of his right to life, should the extradition process be implemented*”.

25. The second remedy was filed on December 1, 2011; it was claimed therein that Mr. Otto “*is facing a criminal proceeding fabricated by his Russian persecutors, where he runs an imminent risk against his physical integrity and his life*”, and that “*in the international sphere the Russian Federation has a known reputation for violating the human rights*”; it requested his immediate liberation, the dismissal of the of the request for extradition, and the safeguarding of his participation in the criminal proceedings he had filed against minister Mario Zamora. In a judgment of December 7, 2011, where it was ordered to abide by the prior judgment of November 29 in considering that the remedy was a reiteration of the habeas corpus which had already been decided, the Constitutional Chamber of the Supreme Court of Justice did not issue any pronouncement on the allegations concerning the risk for Mr. Otto’s life and personal integrity.

26. The third remedy was filed on April 27, 2012, arguing “*a lack of regard for the risks of torture and death of the refuge claimant [...]. Nothing guarantees that once he is in the Russian Federation, Mr. Otto won’t be subjected to new investigations, including for ‘extremism’, which does not have strong enough precautions to keep him from suffering the same luck as other persons who have been tortured and punished. The problem is that once the extradition takes place, the imminent dangers against the physical integrity and life of Mr. Otto would increase and the scenario of noncompliance in that sense, would have irreparable consequences. [...] In the instant case there is a total risk of torture and being submitted to an unfair trial [...]*”. In judgment of May 22, 2012, the Constitutional Chamber again declared the remedy inadmissible, refraining from issuing a pronouncement on the matter of the risks to which the applicant was exposed. On June 19, 2012 the petitioner filed a request of clarification and addition of the judgment which decided this remedy negatively, because the Constitutional

Chamber did not decide on the substantial aspects raised, such as the right to life and physical integrity and the principle of *non-refoulement*; the Constitutional Chamber of the Supreme Court of Justice, in judging on such request, in a decision dated June 26, 2012, held: “(...) *this Court ruled on the merits of the habeas corpus remedy in accordance with its jurisdiction. It is noteworthy that the habeas corpus remedy filed on April 27, 2012 was one hundred and fifty-six pages long, for which reason this Court heard the habeas corpus encompassing all of the constitutional defects found*”. On these grounds the request for clarification and addition was declared inadmissible on June 26, 2012.

27. The fourth remedy was filed on August 22, 2012. In it, the claims were, inter alia, “*breach of the principles of ‘non-refoulement’ and ‘Pro Homine’*”, as well as “*disregard for the risks of torture and death of the applicant for refuge, of sending him to a country where the systematic violation of human rights is public and notorious. [...] Should Mr. Otto be sent to the Russian Federation, having confirmed the indications and the alleged risks and threats –both in his refuge request casefile, and in the request for extradition of* June 19, 2012, *the Costa Rican State would incur in an evident breach of such [pro homine] principle*”. It was emphasized that Mr. Otto had the right to remain in liberty and to not be extradited, “*given that his status of refuge applicant remains active (his second request for refuge dates back to January 2008) and until his petition of refuge is definitely resolved*”, since the administrative act which rejected his request for refuge had been challenged in a still ongoing contentious-administrative procedure. The Constitutional Chamber did not consider it necessary to rule on these allegations since they had, allegedly, been decided in the previous habeas corpus judgments; for which reason, by means of a judgment of August 28, 2012 it declared the remedy inadmissible.

28. Afterwards, on September 18, 2014 the Costa Rican Foundation for Human and Constitutional Rights filed a new habeas corpus remedy in favor of Mr. Otto, claiming that the three-year period of his deprivation of liberty was disproportionate and incompatible with the presumption of innocence. On October 21, 2014 the Constitutional Chamber of the Supreme Court of Justice declared the remedy partially admissible, yet without ordering Mr. Otto’s release, for the violation to the right to prompt and effective justice in the processing of the contentious-administrative proceedings concerning his request for refuge; ordering the Coordinator Judge of Section IV of the Contentious Administrative Court to promptly decide on the case.

29. On July 29, 2015 Mr. Otto’s attorney filed a new habeas corpus remedy against the First Chamber of the Supreme Court of Justice for the violation of the right to due process enshrined in the Political Constitution in negatively deciding on the cassation remedy presented by the alleged victim, invoking an alleged partiality of the judge since one of the justices had participated in three different judgments concerning the same case and there had been no opportunity to recuse him. By means of a judgment of August 25, 2015 the Constitutional Chamber of the Supreme Court of Justice outright rejected the remedy, holding there had been no judicial partiality, and that it wasn’t the competent judge to suspend the implementation of the of the extradition judgment.

30. On August 6, 2015, two citizens filed a new habeas corpus remedy, to which Mr. Otto’s attorney adhered as co-counsel, as well as multiple human rights organizations; they claimed several procedural, evidentiary and substantial reasons to request the liberation of Mr. Otto, including his extended deprivation of liberty and the alleged partiality of the judges who decided the case; another request was the recusal of some justices of the Court so as to prevent them from hearing the case. In a judgment of August 19, 2015, the Constitutional Chamber of the Supreme Court dismissed removing the questioned justices from the case, and reiterated that it was not by means of the habeas corpus remedy that the extradition proceedings followed against Mr. Otto were to be analyzed, but rather through the criminal proceedings. In spite of this, in order to preserve fundamental rights, the Chamber decided to corroborate whether the extradition judge had proceeded with enough evidentiary support, concluding that said judge had not violated the fundamental rights of Mr. Otto, that he had acted with adequate evidentiary grounds, and reiterating the guarantees provided by the Russian government in the sense that Mr. Otto would be judged pursuant to due process and would not be subjected to torture or cruel, inhuman or degrading treatment or punishment, considering said guarantees sufficient to conclude that such treatment would not be imparted to the extradited person. It also disregarded the argument of an alleged lack of independence of the Russian Federation’s judiciary, for being insufficiently proven. The remedy was dismissed.

31. On the same day of his extradition, a new habeas corpus remedy was filed in favor of Mr. Otto; it is reported to the IACHR that *“the Constitutional Chamber issued a judgment at around 16.30 hours ordering the Criminal Court and the migration authorities to halt the departure of Mr. Otto (resolution of 16.30 hours under casefile No. 15-013129-007-CO). Nonetheless, by the time of its notification, around 6.50 pm, the aggrieved person had already left the country”*.

32. The petitioner claims that the alleged victim was deprived of his liberty for a total of three years and eight months, a disproportionate length of time for preventive detention in light of the Inter-American jurisprudence, which not only harmed his right to personal liberty but also his presumption of innocence, violations which were endorsed by the judgments of the Constitutional Chamber of the Supreme Court.

Mr. Otto’s detention conditions in Costa Rica before his extradition

33. In his initial petition, Mr. Otto indicates that *“since the first days of my detention I was warned by the other inmates that I could be killed at somebody’s request, because ‘I interfere with the important people’”*.

34. The petition claims that on January 20, 2012 Mr. Otto was allegedly attacked at the San Sebastián prison by other inmates with a stabbing weapon, attack which caused two wounds on his face. The petitioner asserts that the administration of that prison did not conduct any investigation into the matter, and that his attackers had been kept in the same area in which he was confined, with no search or confiscation whatsoever of the weapons with which he was attacked. He claims he received immediate emergency medical care, but that the fact was only informed to the judiciary and the coroners on February 29, 2012; he also holds he did not receive the medications prescribed for him.

35. By virtue of these aggressions Mr. Otto’s attorney asked that the measure of preventive prison issued against him be modified; on January 27, 2012 the Criminal Court of the III Judicial Circuit of San José turned down this request. On April 5, 2013, the lawyer of the alleged victim presented a brief to the Office of the Prosecutor for Crimes against life denouncing the lack of advances in the investigation of the attack against him.

36. Regarding these allegations, the State has informed that Mr. Otto had been relocated; that the General Directorate of Social Adaptation had initiated a disciplinary proceeding to establish what happened and determine possible responsibilities; and that the criminal complaint filed by the aggrieved party was being conducted under Judicial Casefile No. 12-001500-0041 before the Specialized Unit on Crimes Against Life and Integrity of the Public Ministry, which was duly conducting the investigative actions.

Response of the State

37. In its initial response to the petition, the State formulates three exceptions to its admissibility: lack of exhaustion of domestic remedies, lack of characterization of violations of the American Convention, and resorting to the IACHR as an international appeals court. Additionally, the State expresses a series of substantial arguments, concerning the merits of the present case, which are described below.

38. First, the State sets forth some substantive arguments in its response, namely:

(i) The judicial procedure of extradition in Costa Rica is not aimed at establishing the individual criminal culpability of the extraditable person for the illegal conduct that the requesting State attributes to him or her, nor to evaluate the corresponding evidence for such criminal conduct, but to *“allow the investigation or trial for a given punishable conduct, or the enforcement of the corresponding punishment, to take place in the requesting State”*, considering that under Costa Rican law extradition is conceived as a legal instrument through which one State requests from another State the surrender of a person sought by its authorities, either for prosecution or for implementation of an already imposed sentence. The State explains: *“It is clear then that for this reason, there is no room for calling into question the validity or evidentiary merits concerning the occurrence of the fact, the place of its perpetration, the form of participation or the degree of criminal responsibility; neither*

the legislation that forbids and punishes the criminal act, nor the legal assessment carried out, nor the competence of the judicial body of the requesting country, or the validity of the proceedings through which the person is being accused, because all of these aspects appertain to the exclusive and excluding scope of the judicial authorities of the requesting State, in such a way that their formulation and calling into question has to be made within the corresponding proceedings, through the mechanisms foreseen by the local law". In this line, the judicial extradition procedure in Costa Rica is aimed at assessing compliance with the applicable formalities in this field, and is conceived as a guarantee of the of the rights of the requested person. This was expressed by the Criminal Court of the Third Judicial Circuit of San José in the extradition judgment of November 11, 2011, which was handed down within the legal scope of competence set forth by the applicable domestic law: *"in the instant case, the distinguished IACHR must bear in mind that the jurisdictional competence is only for examining the formal requirements of the request for extradition, its implementation, and should there be indications which point to criminal participation, for granting the extradition; which is to say that it consists of an act of international judicial assistance and not in a procedure aimed at establishing culpability".*

(ii) The extradition judgments of first and second instance made an express reference to the guarantees provided by the government of the Russian Federation regarding the fact that Mr. Otto would be ensured a due process and would not be subjected to tortures nor cruel, inhuman o degrading treatment or punishment, and were based on such diplomatic guarantees in order to grant the extradition, on the grounds of the presumption of good faith in international relations. On this point, Costa Rica holds that the jurisprudence of the Constitutional Chamber of the Supreme Court of Justice of that country has already endorsed, in other precedents, the validity and efficacy of the formal guarantees presented by foreign governments by means of verbal notes; from which it concludes that *"as it stems from the judgments attached to the present brief, the judicial authorities examined and evaluated the alleged situation of risk claimed by Mr. Konstantinovich Otto, within the framework of the commitment proposed by the Russian authorities, which in view of the judicial authorities, was sufficient".*

(iii) Mr. Otto did not raise before the judicial authorities, in the course of the extradition proceedings, the alleged risk of being subjected to torture in case of being extradited to the Russian Federation: *"as regards the judicial courthouse where the extradition proceedings were held, all of the petitioner's allegations centered on the lack of compliance of the requirements applicable to extradition (double jeopardy, statute of limitations, lack of indications of culpability, incomplete and untranslated documents, etc.), yet it was never claimed that the respondent would suffer tortures if he were to be extradited to his country".* The State deduces this conclusion from the appeals briefs, *"in none of which there is evidence of such a complaint".* Therefore, due to this omission by Mr. Otto, the matter concerning the risk of torture was excluded from the debate before the appeals court, in spite of which said appellate court, in referring to the diplomatic guarantees provided by Russia, did issue a pronouncement on the matter. The State, in its additional observations, additionally insists that the considerations of the Costa Rican judges on this point, in the sense of considering the diplomatic guarantees provided by Russian Federation as sufficient for respecting the rights of Mr. Otto during his criminal prosecution, were based on the principle of *pacta sunt servanda* and on the principle of good faith as a cornerstone of international relations.

(iv) The description of the attack suffered by Mr. Otto at the San Sebastián prison does not do justice to reality, since it was him who initiated the confrontation with another inmate which resulted in the wounds on his face, and internal disciplinary measures were taken concerning said incident, as well as his relocation to another section within the same facility, for which reason it is not true that he remained in the same section where his alleged attackers were being held. The State also points out that after the criminal complaint filed by of Mr. Otto's representative, the Public Ministry has carried out the corresponding investigation, which had not concluded when the petition was filed with the IACHR.

39. With regard to the lack of exhaustion of domestic remedies, the State starts from the premise that, in its view, compliance with the duty set forth in article 46.1.a) of the Convention is to be assessed making reference to the status of exhaustion of the domestic remedies at the moment in which the petition was filed; in its words –expressed in the additional observations– *"the State insists that the facts of the petition are to be analyzed taking as reference the date in which petition was filed and the status of the domestic remedies at that moment".* In light of such understanding, the State holds that as of the date of reception of the petition at the

Inter-American Commission, different judicial remedies initiated by Mr. Otto were still pending resolution in Costa Rica, namely: (a) although a first instance extradition judgment had been issued, it was appealed by Mr. Otto on November 16, 2011, and the appeal had not yet been decided at the time of the filing of the petition before the IACHR (March 6, 2012) since it was heard one month and four days later; (b) in any case, in the appellate judgment of April 10, 2012, the Court of Appeals of the Second Judicial Circuit of San José held that the extradition could not materialize until the jurisdictional proceedings initiated by Mr. Otto before the Contentious Administrative Court, seeking the annulment of the judgments which denied his request for asylum, had been resolved and notified; (c) said proceedings before the Contentious Administrative Court, initiated on November 14, 2011, was also still open and pending resolution at the moment of filing the Inter-American petition, and *“according to what was expressly decided by the Court of Appeals, it had the power to suspend the extradition in favor of the Government of the Russian Federation”*; (d) with regard to the alleged aggression suffered by Mr. Otto at the San Sebastián prison, *“the preparatory proceedings of the Public Ministry -at the moment of filing the petition- were still underway, without there being at that time any decision concerning the criminal complaint he filed”* – investigation carried out by the Specialized Unit on Crimes Against Life and Integrity of the Public Ministry under casefile No. 12-001500-004, in which on March 17, 2015 the Public Ministry requested the judge of the Intermediate Stage an evaluation of the indictment and the corresponding initiation of the trial, and the Criminal Court, through a resolution of September 2, 2016 set the respective date for the arguments, summoning a hearing on June 20, 2017.

40. As for the so-called argument of the “international fourth instance”, the State holds that Mr. Otto has resorted to the IACHR seeking that the latter reassess the judgments rendered in the extradition proceedings conducted in Costa Rica, and determine the inadmissibility of said extradition proceedings, also ruling on substantial aspects of the criminal conduct attributed to Mr. Otto. In the State’s words, *“the arguments and reasonings raised by the petitioner evince his desire for this distinguished Commission to review – prematurely– not only the actions taken at the judicial level, but also, on the grounds of subjective considerations and showing his disagreement with a result that was adverse to his interests, he intends to prove his innocence of the facts for which he is required in extradition. [...] questioning before this international body the validity or evidentiary merits related to the occurrence of the fact, its place of perpetration, the legal classification applied or the validity of the proceedings in which he is accused -just to quote a few examples- demonstrates the petitioner’s desire to have the IACHR review these proceedings, which have developed in accordance with national and international norms on the matter”*. Costa Rica highlights that the remedies placed at the disposal of Mr. Otto by its legal system were conducted with respect for due process and provided an adequate forum to debate the matters which were pertinent to exhaust domestically. It also concludes that *“there was no violation of due process because the petitioner had ample opportunities and broadly used the different remedies available in relation to his extradition proceedings, his detention and the contentious administrative proceedings (related to refuge), a situation which is expressly confirmed by the petitioner when filing the petition”*. Later on, in its additional observations, the State argues that the petitioner’s claims are based on a mere discrepancy of his with the interpretation made by Costa Rican judges of the legal provisions that govern extradition. It also asserts that not only did Mr. Otto have full access to all judicial instances in the country, but also some of those judicial proceedings resulted in the recognition of payments of indemnities in his favor for damages caused; and after listing the numerous judicial resolutions issued concerning his case, it concludes that *“there are no elements which indicate that the judgments by the respective courts were adopted based on arbitrary criteria or countering rights enshrined in the American Convention”*.

41. Finally, in regard to the alleged lack of characterization of violations to the American Convention, the State holds that *“the allegations and the factual and legal elements set forth by the petitioner - where he confuses the nature of the extradition procedure with that of the procedures aimed at establishing criminal responsibility – do not tend to characterize violations of the rights safeguarded in the American Convention, and consequently the petition does not meet the requirement foreseen in article 47.b) of said instrument”*.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

42. In the first place, the IACHR must consider the allegation by the State in the sense that the petitioner failed to exhaust the available domestic remedies before resorting to the IACHR, insofar as at the date of reception of the petition at the Executive Secretariat –on March 6, 2012– different judicial proceedings initiated by him were still pending a decision, namely: the appeal against the extradition judgment, the contentious administrative remedy filed by him against the resolutions which denied his request for refuge, and the criminal investigative proceedings related to the wounds he suffered at the San Sebastián prison. On this matter, the State has presented its argument in the understanding that compliance with the requirement set forth in article 46.1.a) of the American Convention is to be assessed taking into account the status of exhaustion of domestic remedies at the date of presentation of the petition.

43. In this regard, the IACHR recalls that, as it has been previously decided and applied by this Commission on several occasions³, the exhaustion of domestic remedies is evaluated in light of the factual and procedural situation that exists at the moment in which the admissibility report is adopted. This entails that if at the time of filing the petition there were certain domestic judicial remedies which were yet to be resolved, but these were decided and effectively exhausted after such date and before the moment of adoption of the admissibility report by the Commission, then such remedies shall be considered to be duly exhausted for the effects of Article 46.1 of the Convention. In the words of the IACHR, *“the analysis of the requirements set out at Articles 46 and 47 of the Convention should be made in light of the situation at the time of the ruling on the admissibility or inadmissibility of the claim. It is very common, during the processing of a matter, for changes to occur in the status of exhaustion of domestic remedies. Nonetheless, the system of petitions and cases ensures that both the State and the petitioner have the full opportunity to submit information and arguments on this point”*⁴. Consequently, the Commission shall assess whether the domestic remedies filed by Mr. Otto and his representatives were effectively exhausted prior to the date of adoption of the present report.

44. The claims raised in the petition, despite its complexity, are mainly three: (1) violation of the human rights of Mr. Otto in the course of the procedure of determination of his status as political asylee and of granting of refuge, at the administrative and judicial levels; (2) violation of the human rights of Mr. Otto throughout the judicial procedure of extradition conducted against him, and for the very act of his extradition; and (3) violation of the human rights of Mr. Otto due to his prolonged preventive detention during the conduction of the extradition proceedings, and for the conditions of imprisonment in which he was detained, including the perpetration of an attack against his personal integrity inside the prison.

45. As for points (1) and (2), as it has decided in prior reports⁵, the IACHR considers that the suitable remedies to exhaust in cases in which violations of procedural guarantees and other human rights throughout the course of judicial proceedings are claimed, are as a general rule those means provided by the national procedural legislation which allow for challenging, in the course of the very proceedings being questioned, the acts and decisions adopted therein, in particular ordinary judicial remedies available, or the extraordinary remedies, should these have been filed by the alleged victims of violations of procedural guarantees in order to claim protection of their rights. The IACHR has established on several occasions that the extraordinary remedies that the petitioner has not voluntarily decided to file are not suitable remedies to

³ IACHR, Report No. 4/15, Petition 582-01. Admissibility. Raúl Rolando Romero Feris. Argentina. January 29, 2015 para 40; Report No. 15/15, Petition 374-05. Admissibility. Workers of the Union of Workers of the Nacional Federation of Coffee Makers of Colombia. Colombia. March 24, 2015, para 39; Report No. 4/19, Petition 673-11. Admissibility. Fernando Alcántara de Figueiredo and Laci Marinho de Araújo. Brazil. January 3, 2019, para 21; Report No. 51/19, Petition 368-08. Admissibility. Peter Andrew Wenzell Ojeda and others. Chile. May 4, 2019, para. 11-12; Report No. 164/17. Admissibility. Santiago Adolfo Villegas Delgado. Venezuela. November 30, 2017, para 13; Report No. 108/19, Petition 81-09. Admissibility. Anael Fidel Sanjuanelo Polo and family. Colombia. July 28, 2019, para 15.

⁴ IACHR, Report No. 35/16, Petition 4480-02. Admissibility. Carlos Manuel Veraza Urtusuástegui. México. July 29, 2016, para 33.

⁵ See, inter alia: IACHR, Report No. 92/14, Petition P-1196-03. Admissibility. Daniel Omar Camusso and son. Argentina. November 4, 2014, para. 68 and following; IACHR, Report on Admissibility No. 104/13, Petition 643-00. Admissibility. Hebe Sánchez of Améndola and daughters. Argentina. November 5, 2013, para. 24 and ss; and IACHR, Report No. 85/12, Petition 381-03. Admissibility. S. and others, Ecuador. November 8, 2012, para. 23 and ss.

process claims of violation of judicial guarantees⁶; on the contrary, if the petitioner effectively chooses to file such extraordinary remedies, their presentation and resolution will indeed be taken into account by the Commission for the purpose of verifying the due exhaustion of domestic remedies and calculating the timeliness of the petition.

46. In this line it is observed that, with regard to the administrative and judicial proceedings of determination of the status of political asylee and granting or denial of refuge, Mr. Otto effectively did make use of the judicial remedies provided by the domestic legislation, both ordinary and extraordinary, like this: (i) against the second administrative rejection of his petition of refuge, he filed a contentious-administrative action on May 14, 2009 before the Contentious-Administrative Court, which was partially decided in his favor on July 8, 2009, in a judgment which was subject to a *cassation* remedy filed by the Prosecutor's Office and declared inadmissible by the Supreme Court on June 9, 2010; (ii) upon compliance of the order by the Contentious-Administrative Court, the General Directorate of Migration once again denied granting refuge to Mr. Otto, decision against which he filed a motion to revoke and in subsidy an appeal, which was dismissed on May 20, 2011 by the Commission of Visas and Refuge, in a decision confirmed on August 31, 2011 by the Administrative Migratory Tribunal; (iii) against these decisions Mr. Otto filed a motion to challenge requesting their annulment before the Contentious Administrative Court on November 14, 2011, remedy which was adversely resolved for Mr. Otto 3 years later by the Fourth Section of the Contentious Administrative Court of the Second Judicial Circuit of San José; (iv) against this ruling, Mr. Otto filed a *cassation* remedy before the First Chamber of the Supreme Court of Justice on January 6, 2015, which declared it inadmissible in a judgment of June 18, 2015; (v) on July 2, 2015 Mr. Otto's attorney filed a motion of addition and clarification of this judgment, which was rejected by the Chamber by means of a decision of July 9, 2015; (vi) on July 2, 2015 Mr. Otto's attorney filed a request for annulment of the *cassation* judgment, declared inadmissible by the Supreme Court on July 16, 2015; and (vii) on August 31, 2015 Mr. Otto's attorney filed a motion for review of the *cassation* judgment before the First Chamber of the Supreme Court, about the resolution of which there is no information, but which had not been yet decided at the time of his extradition to the Russian Federation. It is observed, based on this outlook, that the ordinary and extraordinary remedies available to Mr. Otto and his attorney were effectively filed and exhausted, all of which took place on dates prior to the adoption of the present report. In this regard, therefore, the requirement of article 46.1 of the American Convention is considered to have been met.

47. On the other hand, in relation to the judicial extradition procedure the different ordinary judicial remedies available under Costa Rican law were also filed and exhausted, namely: (i) upon the first detention of Mr. Otto on May 7, 2010 a habeas corpus remedy was filed, which resulted in a decision to immediately set him free on account of his still pending request for political refuge, liberation obtained on May 14, 2010; (ii) on March 25, 2011 the judicial extradition proceedings were initiated against him by the judge of the Court of the I Criminal Circuit of San José, and on November 11, 2011 the judge of Pavas handed down a first instance extradition judgment against him, granting the extradition to Russia and ordering his arrest and immediate detention; (iii) on November 16, 2011 Mr. Otto filed an appeal against this judgment, which was confirmed on April 10, 2012 by the Court of Appeals of Criminal Judgments of the Second Circuit of San José; (iv) on January 10, 2013 Mr. Otto argued before the Criminal Trial Court of the III Judicial Circuit of San José the defense of application of the statute of limitations to the crime under Russian legislation, defense that was rejected by the Court on January 23, 2013; and (v) on March 27, 2015 Mr. Otto filed before the Criminal Court of the III Judicial Circuit of San José a motion for failure to implement the judgment, declared inadmissible by the Criminal Court of the III Judicial Circuit of San José on April 14, 2015. In view of these facts, the IACHR concludes that as of the date of adoption of the present report on admissibility, the ordinary and extraordinary remedies available to Mr. Otto were filed and exhausted.

48. In regard to point (3), the Inter-American Commission has consistently held that "*habeas corpus is the appropriate remedy in all cases in which a person believes that he or she has been illegally deprived of his or her liberty*"⁷. As summarized in paragraphs 21 through 30 above, after his detention on May 7, 2010 the lawyers of the alleged victim filed a total of nine habeas corpus remedies seeking his release, only three of

⁶ IACHR, Report No. 154/10, Petition 1462-07. Admissibility. Linda Loaiza López Soto and family. Venezuela. November 1, 2010, para 49; Report No. 111/19. Petition 335-08. Admissibility. Marcelo Gerardo Pereyra. Argentina. June 7, 2019, para. 11 and ss; Report No. 167/17. Admissibility. Alberto Patistán Gómez. México. December 1, 2017, para. 13 and following.

⁷ IACHR, Report No. 16/08, Petition 12.359. Admissibility. Cristina Aguayo Ortiz and others. Paraguay. March 6, 2008, para 79.

which were judged in his favor: (i) after his initial deprivation of liberty on May 7, 2010 he filed a first habeas corpus remedy, in the judgment of which it was ordered that he be immediately released, which happened on May 14, 2010; (ii) on November 14, 2011 a second habeas corpus remedy was filed, which was denied in a judgment of November 29, 2011 by the Constitutional Chamber of the Supreme Court of Justice; (iii) on December 1, 2011 the third habeas corpus remedy was filed, and it was denied by the Constitutional Chamber on December 7, 2011; (iv) the fourth habeas corpus remedy was filed on April 27, 2012, and it was dismissed by the Constitutional Chamber on May 22, 2012; a motion for addition and clarification was filed on June 19, 2012, and denied on June 26, 2012; (v) the fifth habeas corpus remedy was filed on August 22, 2012, and it was denied by the Constitutional Chamber on August 28, 2012; (vi) on September 18, 2014 the Costa Rican Foundation for Human Rights filed the sixth habeas corpus remedy in favor of Mr. Otto, which was declared partially admissible on October 21, 2014 by the Constitutional Chamber on account of the excessive delay in the resolution of the contentious-administrative remedy related to the denial of his refuge, yet without ordering his release; (vii) on July 29, 2015 a seventh habeas corpus remedy was filed, which was rejected outright on August 25, 2015 by the Constitutional Chamber; (viii) on August 6, 2015 two citizens filed an eighth habeas corpus remedy, to which different actors joined as co-counselors, but it was denied on August 19, 2015 by the Constitutional Chamber; and (ix) on September 2, 2015 a new urgent habeas corpus remedy was filed given his imminent extradition, and although the Constitutional Chamber ordered to halt his departure of the country, this decision was notified when Mr. Otto had already been removed from Costa Rican territory and was on his way to the Russian Federation. Faced with this panorama, the IACHR concludes that Mr. Otto indeed filed, and obtained the exhaustion, of the remedies available under Costa Rican law to achieve his effective and prompt liberation, prior to the adoption of the present admissibility report.

49. Also in connection to point (3), but concerning the assault suffered by Mr. Otto in the San Sebastián prison, it is recalled that the uniform standpoint of the Inter-American Commission indicates that in cases where the violation to the right to personal integrity is claimed, the suitable remedy to be exhausted domestically is the criminal prosecution route, via the ex-officio and diligent conduction of investigations which identify those responsible for the violation and subject them to trial and punishment in accordance with the American Convention⁸; this burden is to be assumed by the State as its own legal duty, and not as the management of private interests, or as one that depends on private initiative nor on the provision of evidence by private parties⁹. The State itself has informed that Mr. Otto effectively filed a criminal complaint on account of the attack he suffered in prison, and that the Public Ministry initiated a criminal investigation; however, up to this date there is no information as to the conclusion of this investigation, nor have those responsible for the attack been identified, tried and punished. Therefore, because 9 years have elapsed since the moment of the assault, the exception of unjustified delay set forth in article 46.2.c) of the American Convention has been configured in this regard.

50. All of ordinary and extraordinary remedies filed and decided, or wrongfully delayed, in relation to points (1), (2) and (3), were filed and/or exhausted prior to the reception of the petition at the Executive Secretariat of the IACHR on March 6, 2012. Consequently, in application of the same rule described above in paragraph 42, the petition is considered to have been timely submitted in light of the provisions of Article 46.1.b) of the American Convention.

VII. ANALYSIS OF COLORABLE CLAIM

51. The instant case poses before the IACHR legal problems of significant complexity. The Commission recalls in this regard that the evaluation criterion at the phase of admissibility differs from that which is used to rule on the merits of a petition; in this first phase, the Commission is to carry out a *prima facie* assessment in order to determine whether the petition establishes the grounds of the possible or potential

⁸ IACHR, Report No. 72/18, Petition 1131-08. Admissibility. Moisés of Jesús Hernández Pinto and familia. Guatemala. June 20, 2018, para 10. IACHR, Report N° 70/14. Petition 1453-06. Admissibility. Maicon of Souza Silva. Renato da Silva Paixão and others. July 25, 2014, para 18; Report No. 3/12, Petition 12.224, Admissibility, Santiago Antezana Cueto and others, Perú, January 27, 2012, para. 24; Report No. 124/17, Petition 21-08, Admissibility, Fernanda López Medina and others, Perú, September 7, 2017, para. 3, 9-11.

⁹ IACHR, Report No. 159/17, Petition 712-08. Admissibility. Sebastián Larroza Velázquez and family. Paraguay. November 30, 2017, para 14.

violation of a right guaranteed by the Convention, but not to establish the actual existence of a violation of rights. This determination of the characterization of violations of the American Convention constitutes a primary analysis, which does not imply prejudging on the merits of the matter¹⁰.

52. In this line, the Commission considers that the substantial arguments raised by the State, summarized in paragraph 37 *supra*, because of their content require a thorough study at the merits phase of the present international procedure, thereby exceeding the scope of the current stage of admissibility, for which reason there shall be no pronouncement nor prejudging whatsoever in the present report on the issues of: the nature of the judicial extradition procedure in Costa Rica *vis-à-vis* the claims and complaints by the petitioner before the Inter-American system, the sufficiency of the diplomatic guarantees provided by the Russian Federation and considered by the domestic judges, the formulation or lack thereof of an allegation on the risk of torture in the Russian Federation during the judicial extradition proceedings in Costa Rica, or the truthfulness of the description made by the petitioner of the assault he suffered while imprisoned at the San Sebastián facility.

53. Costa Rica argues that the petitioner has resorted to the IACHR as an international appeals tribunal, since he intends to call into question, at the Inter-American level, the content of domestic judicial decisions adopted in the course of the extradition proceedings conducted against Mr. Otto, and because he has expressed mere disagreements with the interpretation set forth in domestic judgments which are final. The Inter-American Commission has adopted a uniform and consistent position, in the sense that it is indeed competent to declare a petition admissible and decide on its merits in cases related to domestic proceedings which may violate the rights safeguarded by the American Convention. *Contrario sensu*, when a petition is addressed against the content, the evidentiary assessment or the judicial reasoning set forth in a definitive judgment, which has been adopted respecting due process and the other guarantees enshrined in the Convention, the IACHR lacks competence, since it is not called upon to carry out a new examination, at the Inter-American level, of what was decided domestically by the national judges in the exercise of their legitimate attributions and within the sphere of their own jurisdiction¹¹. In the instant case, the Commission notes that although Mr. Otto's complex claims partially implicate both the content and the evidentiary support of several judicial decisions adopted in Costa Rica, the petition does not seek, as such, that the IACHR review or reconstitute the judicial reasoning reflected therein, nor that it *ex post facto* declare the extradition inadmissible, but rather, it clearly denounces, for numerous reasons, possible violations to the American Convention on Human Rights, committed in the course of the administrative and judicial proceedings conducted against Mr. Otto, and it specifically indicates certain violations of human rights which resulted from some of the domestic judicial resolutions.

54. In order to assess the characterization of possible violations to the American Convention in the petition under study, and solely for the purpose of analyzing the admissibility of the present case, it is pertinent to quote the judgment of the Inter-American Court on Human Rights in the case of Wong Ho Wing v. Perú¹², which examined compliance in that specific case with the following guarantees: the obligation to protect the rights to life and personal integrity in cases where there exists a real, foreseeable and personal risk to those rights in the requesting State; the principle and obligation of non-refoulement of persons who request refuge; the guarantee of a reasonable time to conduct the corresponding judicial proceedings; the excessive delay in the deprivation of liberty of the extraditable person; and the effectiveness of the habeas corpus remedies and requests for release filed by the extraditable person. The IACHR has also taken into account for purposes of this assessment the recently-published IACHR thematic report on due process guarantees in procedures for the determination of asylum¹³, in which there is a detailed specification of, inter alia, certain essential safeguards for those who resort to a request for refuge, including the promptness of the procedure of determination of the

¹⁰ IACHR, Report No. 69/08, Petition 681-00. Admissibility. Guillermo Patricio Lynn. Argentina. October 16, 2008, para 48.

¹¹ IACHR, Report No. 122/19. Petition 1442-09. Admissibility. Luis Fernando Hernández Carvajal and others. Colombia. July 14, 2019; Report No. 116/19. Petition 1780-10. Admissibility. Carlos Fernando Ballivián Jiménez. Argentina. July 3, 2019, para 16; Report No. 111/19. Petition 335-08. Admissibility. Marcelo Gerardo Pereyra. Argentina. June 7, 2019, para 13.

¹² Inter-American Court on Human Rights. Case Wong Ho Wing v. Perú. Preliminary Exception, Merits, Reparations and Costs. Judgment of June 30, 2015. Serie C No. 275.

¹³ IACHR, Due process in procedures for the determination of the refugee status and statelessness and the granting of complementary protection. OAS Document /Ser.L/V/II. Doc. 255, August 5, 2020.

asylum, the evaluation of the risks that pend upon their personal integrity or life, the principle of non-refoulement, the due motivation and justification of the decisions adopted, and other fundamental guarantees.

55. In this sense, and without prejudging on the merits of the present matter, the allegations raised by the petitioner warrant an analysis on the merits for the following reasons:

(a) It is unclear whether the due process guarantees were actually respected in the course of the administrative and judicial proceedings aimed at determining the status of refugee of Mr. Otto, *inter alia* due to its extended duration, and because of the motivation of the judicial decisions adopted in the course of said procedure; it is specifically relevant to consider the three-year delay in the resolution of the contentious-administrative appeal while Mr. Otto was detained, resolution which only took place when the Constitutional Chamber of the Supreme Court of Justice ordered it in a habeas corpus judgment.

(b) Mr. Otto expressly raised before the Costa Rican judicial and governmental authorities, on several occasions, that his life and personal integrity were at risk case of being extradited to Russia. Nonetheless, it is unclear whether these allegations were examined in accordance with the applicable Inter-American legal standards, which calls for a study on the merits, the level of which exceeds the degree of *prima facie* assessment appropriate to the stage of admissibility. In the judgment that dismissed the habeas corpus remedy filed on August 6, 2015, the Constitutional Chamber of the Supreme Court made a reference to this matter, yet the sufficiency of this judicial decision must be examined in light of the Inter-Americans norms with an outlook that exceeds the *prima facie* examination criterion which is distinctive of the stage of admissibility, given the complexity of the legal problem raised in the petition; *inter alia*, because it was not the extradition judge, but a habeas corpus judge who made these considerations, and because the sufficiency of the diplomatic guarantees provided by the Russian Federation's government was presumed, for the purposes of the evaluation of the risk which could befall upon Mr. Otto in case of being extradited to Russia for criminal prosecution, all the more so because this was a case of an applicant for political refuge who claimed to be the victim of persecution in the requesting country. On the other hand, the refusal of the Appeals Court to issue a pronouncement, in its decision of April 10, 2012, on the express allegation of Mr. Otto concerning the risk he ran, may also characterize a violation of article 8 of the American Convention; the State has alleged in its response that Mr. Otto did not pose in a sufficiently clear manner the risk of torture in his appeal, for which reason it considers its international responsibility not to have been compromised; but at the same time Mr. Otto has proven before the IACHR that in this remedy he did indeed claim that his personal integrity and his security could not be guaranteed in the requesting State. The Inter-American Court in the judgment of the case of Wong Ho Wing expressly highlighted the obligation of the requested State in an extradition procedure to verify the reliability of the diplomatic guarantees provided by the requesting State, an obligation of Costa Rica whose fulfilment must also be determined at the merits phase of the present affair.

(c) Mr. Otto was subject to a prolonged deprivation of liberty in Costa Rica in *status* of preventive detention, to the point that, as reported by the State, such preventive prison was enough for Russia to consider that he had served most of the sentence imposed upon him for the crime of which he was charged in that country; it also possibly entailed an impact upon his health and other human rights, and those of his family.

(d) Mr. Otto's extradition materialized on September 2, 2015, despite the fact that (i) a motion for review had been filed on August 31, 2015, and it was still pending resolution, and (ii) the Constitutional Chamber of the Supreme Court, in judging the ninth habeas corpus filed in his favor, had ordered the Government to suspend the implementation of the extradition, decision that was not notified to the competent authorities before Mr. Otto departed Costa Rica. These events may have borne an impact upon the enjoyment of several human rights protected in the American Convention, including the fair trial guarantees and the right to judicial protection.

56. In view of these considerations, and after carefully examining the factual and legal elements set forth by the parties, the IACHR considers that the petitioner's claims are not manifestly unfounded and require a study on the merits, since the alleged facts, if corroborated, may characterize violations of articles 7 (personal liberty), 8 (fair trial), 22 (circulation and residence), and 25 (judicial protection) of the American Convention, in relation to article 1.1 (obligation of respect rights) thereof.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 7, 8, 22 and 25 of the American Convention in connection to Article 1.1 thereof; and

2. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 31st day of the month of March, 2021. (Signed:) Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández (dissident vote), and Stuardo Ralón Orellana, Commissioners.